Supreme Court, U.S.
FILED
AUG 13 1993
OFFICE OF THE CLERK

No. 92-780

IN THE

Supreme Court of the United States

OCTOBER TERM, 1993

NATIONAL ORGANIZATION FOR WOMEN, INC., on behalf of itself and its women members and other women who use or may use the services of women's health centers that provide abortions; DELAWARE WOMEN'S HEALTH ORGANIZATION, INC.; and SUMMIT WOMEN'S HEALTH ORGANIZATION, INC., on behalf of themselves and all other similarly situated clinics,

Petitioners,

v.

JOSEPH M. SCHEIDLER, *et al.*,

Respondents.

On Writ of Certiorari to the United States Court of Appeals for the Seventh Circuit

BRIEF OF PETITIONERS

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PETITION FOR CERTIORARI FILED NOVEMBER 2, 1992
CERTIORARI GRANTED JUNE 14, 1993

QUESTION PRESENTED FOR REVIEW

Whether the courts should create an unwritten requirement limiting RICO to cases where either the enterprise or the racketeering activity has an overriding economic motive?

PARTIES TO THE PROCEEDINGS AND RULE 29.1 STATEMENT

In addition to the respondent listed in the caption, respondents include Randall A. Terry; Andrew Scholberg; Timothy Murphy; Monica Migliorino; Pro-Life Action League, Inc.; Project Life; and Operation Rescue.

The parent company of petitioners Delaware Women's Health Organization, Inc. and Summit Women's Health Organization, Inc. is Women's Health Organization, Inc. The National Organization for Women, Inc. has no parent or subsidiary companies.

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NATIONAL ORGANIZATION FOR WOMEN, INC., on behalf of itself and its women members and other women who use or may use the services of women's health centers that provide abortions; DELAWARE WOMEN'S HEALTH ORGANIZATION, INC.; and SUMMIT WOMEN'S HEALTH ORGANIZATION, INC., on behalf of themselves and all other similarly situated clinics,

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BRIEF OF PETITIONERS

OPINIONS BELOW

The opinion of the Court of Appeals for the Seventh Circuit is reported at 968 F.2d 612 (7th Cir. 1992), and is reproduced as Appendix A to the Petition for Writ of Certiorari (the "Petition"). The opinion of the District Court for the Northern District of Illinois, dismissing this lawsuit, is reported at 765 F.Supp. 937 (N.D. Ill. 1991), and is reproduced as Appendix B to the Petition. The order denying the Petition for Rehearing is reproduced as Appendix G to the Petition.

STATEMENT OF JURISDICTION

This Court granted certiorari on June 14, 1993. Petitioners were granted an extension to file their brief on or before August 13, 1993. The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

STATUTORY PROVISIONS INVOLVED

18 U.S.C. § 1961(1)

"racketeering activity" means (A) any act or threat involving murder, kidnaping, gambling, arson, robbery, bribery, extortion, or dealing in narcotic or other dangerous drugs, which is chargeable under State law and punishable by imprisonment for more than one year; (B) any act which is indictable under any of the following provisions of title 18, United States Code: Section 201 (relating to bribery), section 224 (relating to sports bribery), sections 471, 472, and 473 (relating to counterfeiting), section 659 (relating to theft from interstate shipment) if the act indictable under

section 659 is felonious, section 664 (relating to embezzlement from pension and welfare funds), sections 891-894 (relating to extortionate credit transactions), section 1084 (relating to the transmission of gambling information), section 1341 (relating to mail fraud), section 1343 (relating to wire fraud), section 1503 (relating to obstruction of justice), section 1510 (relating to obstruction of criminal investigations), section 1511 (relating to the obstruction of State or local law enforcement), section 1951 (relating to interference with commerce, robbery, or extortion), section 1952 (relating to racketeering), section 1953 (relating to interstate transportation of wagering paraphernalia), section 1954 (relating to unlawful welfare fund payments), section 1955 (relating to the prohibition of illegal gambling businesses), sections 2314 and 2315 (relating to interstate transportation of stolen property), sections 2341-2346 (relating to trafficking in contraband cigarettes), sections 2421-24 (relating to white slave traffic); (C) any act which is indictable under title 29, United States Code, section 186 (dealing with restrictions on payments and loans to labor organizations) or section 501(c) (relating to embezzlement from union funds); or (D) any offense involving fraud connected with a case under title 11, fraud in the sale of securities, or the felonious manufacture, importation, receiving, concealment, buying, selling, or otherwise dealing in narcotic or other dangerous drugs, punishable under any law of the United States[.]

18 U.S.C. § 1961(4)

"enterprise" includes any individual, partnership, corporation, association, or other legal entity, and any union or group of individuals associated in fact although not a legal entity[.]

18 U.S.C. § 1962(c)

It shall be unlawful for any person employed by or associated with any enterprise engaged in, or the activities of which affect, interstate or foreign commerce, to conduct or participate, directly or indirectly, in the conduct of such enterprise's affairs through a pattern of racketeering activity or collection of unlawful debt.

18 U.S.C. § 1964(c)

Any person injured in his business or property by reason of a violation of section 1962 of this chapter may sue therefor in any appropriate United States district court and shall recover threefold the damages he sustains and the cost of the suit, including a reasonable attorney's fee.

STATEMENT OF THE CASE

The Parties

This class action lawsuit was brought under the Racketeer Influenced and Corrupt Organizations Act ("RICO") against a nationwide terrorist organization of

anti-abortion extremists who target reproductive health care clinics, staff and patients for violence and other criminal acts.[1] The extremists, along with their local and regional organizations, conduct and participate in the affairs of an enterprise, Pro-Life Action Network ("PLAN"), which coordinates the threats and acts of violence against these clinics nationwide.[2] J.A.100-101. PLAN's stated objective is to drive all clinics performing abortions out of business "by any and all means available." J.A.53 (¶53). These means include extortion through direct threats of personal harm to clinic personnel and patients; arson and fire-bombing; burglary and criminal damage to clinic property and equipment; and threats against the clinics'

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[1] The original complaint was brought under the antitrust laws against only four of the defendants (Scheidler, Ryan, Pro-Life Action League, Inc., ("PLAL") and Pro-Life Direct Action League, Inc.). Record ("R.")1. In 1989, after the Pro-Life Action Network had organized Operation Rescue, the complaint was amended to add RICO and state law tort claims, and additional defendants were joined. R.155. (A few of the defendants were named on only the antitrust, not the RICO, claims and thus are not respondents here.) Later that same year, a Second Amended Complaint was filed, omitting one of the named plaintiff clinics and adding an additional clinic as class representative. Joint Appendix ("J.A.") 39-80. In addition to the RICO claim under § 1962(c), a § 1962(a) claim was also raised in the amended complaints and dismissed below. However, plaintiffs did not seek a writ of certiorari on the § 1962(a) issues.

[2] PLAN is structured as a coalition of anti-abortion extremists and their locally-based organizations. It is comprised of defendants Scheidler, PLAL, Scholberg, Migliorino, Murphy, Terry, Operation Rescue, and Project Life, as well as other co-conspirators and participants who are not defendants in this suit. PLAN is the umbrella organization that incorporates the various "organized and violent mobs across the country" to which Justice Stevens referred in *Bray v. Alexandria Clinic*, ___ U.S. ___, 113 S.Ct. 753, 768 (1993) (Stevens, J., dissenting).

lessors, medical laboratories and suppliers. J.A.39-40(¶2); 118-197. In March of this year, a protest led by co-conspirator John Burt targeted a Pensacola clinic and Dr. David Gunn was murdered.[3]

The plaintiffs who bring this suit are clinics[4] that have been physically besieged by the defendants and their co-conspirators, J.A.41-42 (¶¶6-8); 45 (¶21); 46 (¶¶23-27); 50-51 (¶¶43-46); a class of women who have sought to use (or who may seek to use) the clinics' services, J.A.41(¶5); 45-46(¶22); and the National Organization for Women ("NOW"), which has a vital interest in women's rights to privacy and reproductive freedom. *Id.* As charged in the Second Amended Complaint, J.A.39-88, and RICO Case Statement, J.A.87-197, between 1980 and 1990, the defendants and their co-conspirators made public threats against every women's health clinic in the nation that performs abortions and against their staffs and patients. The defendants organized and carried out mob actions including no fewer than:

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[3] Burt is a co-conspirator who, with defendant Scheidler, committed assaults and vandalized another Pensacola clinic in March, 1986. *See* J.A.50 (¶¶ 41-42); J.A.165. Defendant Operation Rescue circulated "Wanted" posters with Dr. Gunn's picture on them. After the murder, Scheidler commented: "I have to admit that some good came out of it; Doctors are going to be more difficult to get." *Chicago Tribune*, May 12, 1993, p. 1.

[4] Two representative clinics bring this suit on behalf of all clinics similarly situated. J.A.45 (¶ 21). Although the plaintiffs promptly moved for class certification under Rule 23, Fed. R. Civ. P., R.61, and renewed that motion from time to time, *e.g.*, R.297, at the defendants' insistence, *e.g.*, R.73, the class certification issue was deferred indefinitely by the District Court. R.76.

- 73 invasions or "blitzes" of class member clinics;
- 311 physical blockades;
- 23 acts of arson and attempted arson;
- 33 fire bombings and attempted fire bombings;
- 11 acts of destruction of clinic equipment and property;
- 8 assaults and batteries upon clinic staff and personnel;
- 84 acts of harassment;
- 383 acts of trespass on private clinic property;
- 25 burglaries and thefts; and
- 7 extortionate acts of interference with clinics' leases and other contractual relations.

J.A.87-197. In addition, the defendants stole and exploited more than 4,000 fetuses sent by interstate mail to an Illinois laboratory for pathology testing, and threatened to disclose publicly the identities of the women who conceived the fetuses. J.A.57 (¶¶64-78), 69-70 (¶¶97(j), 98(l)).

The individual defendants have been arrested repeatedly. J.A.39-80; 118-160. While many of the predicate acts have resulted in criminal charges and convictions, J.A.47 (¶¶32); 51 (¶46); 118-197, a large number of the defendants' mob actions have so overburdened the local law enforcement and judicial

systems that their terrorism has gone undeterred. *Id.*[5] The defendants have routinely ignored injunctions entered against them. *See* J.A.93-95.

The Enterprise and the Predicate Acts

PLAN is a highly-organized nationwide network of anti-abortion extremists; its member organizations include defendants PLAL and Operation Rescue. J.A.44 (¶¶17-19); 100. The executive directors of these member organizations[6] serve on PLAN's "steering committee" or "leadership council." J.A.100-102. PLAN is responsible for the overall national strategy of what it calls "direct action" against clinics, clinic staff and patients; PLAN's activities include multi-city "blitzes," national organizing conferences and training sessions, and the adoption of national agendas. J.A. 48-55 (¶¶38-55); 100-102. At its 1985 annual conference, PLAN designated 1985-1986 as "the year of pain and fear" for anyone giving or receiving an abortion. J.A.49 (¶40). PLAN conference participants were greeted with a marquee at the conference site that said, "Have a Blast," and participants wore firecrackers, symbolizing dynamite, on their lapel labels. J.A.49 (¶40).

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[5] As examples, the July 19, 1988, Atlanta blockades resulted in approximately 1,200 arrests, J.A.56 (¶ 61); 157, and the May 2, 1988, blockade in Binghamton resulted in 1,647 arrests. J.A.156. Since the Complaint was last amended, over 2,700 were arrested in Wichita in 1991 and 600 in Buffalo, New York, in 1992.

[6] Defendant Scheidler founded and heads PLAL; defendant Terry founded and directs Operation Rescue.

The participants in the enterprise have committed criminal acts directly against clinics, their staff and patients. J.A.44 (¶¶17-19); 47-57 (¶¶28-63); 99-106. They claim that they "cannot wait for the legislative and judicial process that will make abortion illegal. The activist has to save lives now." Scheidler, J., *Closed: 99 Ways to Stop Abortion*, p. 17 (R.30 Ex. A); J.A.47 (¶28). They have proclaimed, "No abortion clinic will be spared." J.A.53-54 (¶53).[7] They refer to this direct interference with the operation of clinics that provide abortions and with the efforts of women to obtain those services as "direct action," a term that forms part of PLAL's name.

Defendants Migliorino, Murphy, Scheidler, Scholberg and Terry are well-known anti-abortion extremists who conduct the affairs of PLAN. They have publicly and repeatedly stated their intention to close down abortion clinics nationwide. *See, e.g.*, J.A.42-43 (¶¶9-15). Through a well-organized telecommunications network, PLAN mobilizes participants to assemble in sufficient numbers to carry out its terrorist acts and disrupt the operations of specific clinics for periods of up to many weeks. J.A.46-47 (¶27); 68-69 (¶98(i)); 108-109.

Under the direction of a designated leader, an assemblage of extremists typically blocks access to clinics, invades them and harasses and attacks their personnel and patients. *E.g.*, J.A.50 (¶¶41-42); 97-98. Frequently the group engages in direct attacks on the clinics' operations in some other way, such as destroying medical equipment; pouring glue into locks of clinic doors so they cannot open;

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[7] Plaintiffs do not suggest that defendants' speech or writing is illegal, but cite it as an admission of their criminal intent to violate the law and, specifically, to commit the predicate acts charged here.

locking participants' heads to the door of a clinic to prevent it from opening, J.A.50 (¶42); 54-55 (¶55); kidnaping clinic doctors, or disabling doctors' cars, J.A.161. The recent murder of Dr. Gunn demonstrates the extremes to which the enterprise's recruits will go to make real their threats.

At least once a year for the past several years, conspiracy leaders have orchestrated and carried out a "national day of rescue" to blockade selected clinics across the country simultaneously. J.A.56-57 (¶62); 69 (¶98(i)(4)); 100-102; 118-159.[8] Typically, only the top leadership of the enterprise knows before the last moment which clinics will be targeted so as to minimize the ability of local police to protect the clinics and their staff and patients. *See* J.A.106.

Interstate Commerce

PLAN members raise hundreds of thousands of dollars annually for their criminal activity and spend substantial sums on interstate telephone calls and postage to organize their crimes, not to mention salaries and expenses for the leaders and "consultants" (including the individual defendants) who travel throughout the country conducting workshops on "direct action" and leading the terrorist campaigns. J.A.48-49 (¶38); 55-57 (¶¶58-63).

The PLAN enterprise has a serious impact on interstate commerce aside from its own substantial expenditures. When a clinic is under siege, women are denied access not

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[8] On October 29, 1988, the National Day of Rescue spanned 40 cities and resulted in nearly 2,500 arrests. J.A.56-57 (¶62).

only to abortion services but also to routine gynecological health care, such as breast cancer screening, pap tests, contraceptive counseling, birth control products, fertility counseling and treatment, and gynecological education. *E.g.*, J.A.41-42 (¶¶6, 7). The patients of the class-member clinics frequently travel interstate to obtain reproductive health care services, including abortion, J.A.45-46 (¶¶21-24); 108-109, and the crimes of the enterprise directly interfere with their ability to obtain these services.

Injury to Business and Property

As a result of defendants' predicate acts of racketeering, clinics have been driven out of business; their businesses have been interrupted; their property has been destroyed; they have been forced to incur increased security costs and higher insurance premiums; they have had to cope with the harassment of personnel, vendors and landlords; and they have lost substantial revenues. J.A. 60-62 (¶¶76-78); 63 (¶¶86-87); 63-72 (¶¶89-105); 112-113. The defendants' blockades, property destruction and physical violence have caused a number of clinic employees, including doctors, to resign their positions out of fear of further injury by these extremists; and employee productivity at clinics has, of course, decreased. J.A.50-51 (¶44); 66 (¶97). Repairs to damaged buildings and the replacement of equipment and supplies destroyed by the conspirators have added to the clinics' damages. The increased operating costs imposed on the clinics by the defendants' crimes have diminisned clinics' profits and have caused clinics to pass on some of these costs to their patients in the form of higher prices. J.A.63 (¶¶87-89). Patients of the targeted clinics have also suffered from threats and acts of physical assault and harassment by the

defendants. Patients have been deprived of access to medical services; and they have paid the inevitable increase in prices for clinic services. J.A.63-64 (¶¶91); 66 (¶97). Because the enterprise operates nationwide, each class-member clinic faces the constant threat that if it continues its business, its doctors, staff and patients may be the next victims of these violent and destructive acts.

Economic Benefits Derived By the Defendants

The predicate acts through which PLAN operates have produced substantial amounts of money for the individual defendants and the enterprise. In 1989 alone, Operation Rescue (which is no more than a business name for Terry individually) reported income of more than $777,000. J.A. 104-105. As early as 1986, PLAL's income was over $100,000, and PLAL director Scheidler received a $45,000 salary plus "perks" like a company car and travel reimbursements. J.A.71-72 (¶¶100-104); 103. PLAN's "consultants" receive stipends of up to $800 per week. J.A.105. Among the enterprise's sources of revenue are commercial sales of training materials explaining how to close abortion clinics and evade law enforcement authorities. Additional money to fund PLAN's activities comes from contributions, which rise in direct proportion to the intensity of the uproar and damage caused by the enterprise's tactics. J.A.108. One of the defendants, Project Life, operates anti-choice clinics that directly compete with the plaintiff clinics in reproductive services and counseling.

Proceedings Below

Despite these well-pled facts, the District Court dismissed the complaint under Rule 12(b)(6), Fed. R. Civ. P.; the Seventh Circuit "reluctantly affirm[ed]" that dismissal,[9] holding "RICO requires either an economically motivated enterprise or economically motivated predicate acts." Pet. A-2.[10]

SUMMARY OF ARGUMENT

The economic motive requirement that the Seventh Circuit imposed on § 1962(c) finds no support in the text of RICO. The creation of this non-textual requirement contravenes Congress's directive that RICO is to be interpreted broadly. Examination of the Organized Crime Control Act ("OCCA"), of which RICO is a part, underscores the breadth of RICO's provisions by revealing

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[9] The Seventh Circuit described the defendants' deeds as "reprehensible conduct," Pet. A-17, and acknowledged the District Court's finding (made in the course of denying one of the defendants' Rule 11 motions) that "the defendants, in particular Scheidler, have links with arsonists who have fire-bombed health centers." Pet. A-3 n.5. (References to the Appendices to the Petition are cited "Pet. A-___" and "Pet. B-___.") The court also recognized that the conduct charged in the complaint is "otherwise-criminal" and "directed at destroying all health centers performing abortions." Pet. A-19.

[10] At the same time that it dismissed the RICO claims, the District Court dismissed the antitrust claim on the grounds that the defendants' conduct was not "commercial." The Seventh Circuit affirmed that dismissal as well, but this Court limited its grant of *certiorari* to the RICO issue.

the contrast between RICO and other, more limited portions of the OCCA.

While there is no need to look beyond RICO's plain and unambiguous text, the legislative history of RICO supports its plain language. Congress expressly rejected versions of the bill that would have limited RICO to profit-seeking enterprises or to predicate acts motivated by financial concerns.

For more than a decade, this Court has rebuffed lower courts' attempts to engraft unwritten requirements onto RICO. This Court's decisions underscore the impropriety of imposing limitations not found in the definitions of "enterprise" and "racketeering activity." Congress defined the terms "enterprise" and "racketeering activity" clearly and precisely, avoiding any need to look for hidden meanings in them or to judicially amend the terms, as the lower courts did.

The economic motive requirement that the Seventh Circuit has imposed is vague, uncertain and problematic. It would invite the weighing of subjective racial, religious, political, psychological and social motivations that have no place in RICO cases. Such a requirement would severely hamper the effectiveness of RICO, render already complex cases unmanageable and impose tremendous burdens on the courts.

In enacting RICO, the economic elements that concerned Congress were the *effect* of concerted criminal conduct on businesses and interstate commerce, not the motives of the perpetrators of criminal acts. In this case, there is no question that the defendants' highly-organized, nationwide campaign of terrorism against clinics that

perform abortions has injured the business and property of these clinics and their patients. This is the only economic requirement that RICO imposes.

However, if the Court were to open the Pandora's box of economic motives, there are ample facts contained in the Complaint and RICO Case Statement to permit NOW and the clinics to proceed with discovery and trial. The well-pled facts show that the defendants' motives include the desire for the substantial economic benefits that they receive from their wrongful conduct. Most of the defendants had low-paying jobs before being elevated into positions in the enterprise that compensate them lucratively. The defendants' unlawful work is done for money, and most of the defendants have no business outside their employment by the enterprise or its member organizations.

The defendants and their enterprise profit from their acts of violence, and they have hidden portions of the proceeds received in support of their violent crimes to keep these assets safe from court fines and civil judgments. This in itself indicates economic motive. The defendants and their enterprise have other economic aspects, as well, for they operate with all the accoutrements of profit-seeking businesses, including budgets, employees, staff and modern equipment.

The lower court dismissed this case on a Rule 12(b)(6) motion. While there is no principled or practical reason to enmesh the courts in an inquiry about motives, if the Court were to affirm the Seventh Circuit's economic motive requirement, NOW and the clinics should be given the opportunity to prove that it has been satisfied. The complaint alleged economic purposes and benefits that

should not have been ignored when the lower court created this requirement.

ARGUMENT

I.
NEUTRAL PRINCIPLES OF STATUTORY CONSTRUCTION FORBID THE ADDITION OF AN UNWRITTEN "ECONOMIC MOTIVE" LIMITATION TO RICO

The text with which we are concerned provides:

> It shall be unlawful for any person employed by or associated with any enterprise engaged in, or the activities of which affect, interstate or foreign commerce, to conduct or participate, directly or indirectly, in the conduct of such enterprise's affairs through a pattern of racketeering activity or collection of unlawful debt.

18 U.S.C. § 1962(c). The statute does not say a word about economic motive. Nonetheless, the Seventh Circuit dismissed the complaint on a Rule 12(b)(6) motion, holding that an economic motive is required for a § 1962(c) claim. In reaching this conclusion, the Seventh Circuit added to the statute a requirement that simply is not there; in doing so, it violated the most basic rules of statutory construction.

A. The Text of RICO Shows that An Economic Motive is *Not* Required

1. The Plain Language of the Statute is the First and Best Indication of Its Meaning

In interpreting a statute, this Court has consistently stressed that "'we look first to its language,'" *Reves v. Ernst & Young*, ___ U.S. ___, 113 S.Ct. 1163, 1169 (1993), citing *United States v. Turkette*, 452 U.S. 576, 580 (1981). Courts "must presume that a legislature says in a statute what it means and means in a statute what it says there....When the words of a statute are unambiguous, then this first canon [of statutory construction] is also the last: judicial inquiry is complete." *Connecticut Nat'l Bank v. Germain*, ___ U.S. ___, 112 S.Ct. 1146, 1149 (1992).[11] The Court attempts to enforce the purpose behind the legislation, and "[t]here is...no more persuasive evidence of the purpose of a statute than the words by which the legislature undertook to give expression to its wishes." *Griffin v. Oceanic Contractors, Inc.*, 458 U.S. 564, 571 (1982); *see also I.N.S. v. Cordoza-Fonseca*, 480 U.S. 421, 431 (1987).[12]

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[11] In *West Virginia University Hospitals, Inc. v. Casey*, ___ U.S. ___, 111 S.Ct. 1138, 1147 (1991), the Court declared that the best evidence of the purpose of a statute is the "statutory text adopted by both Houses of Congress and submitted to the President....Where [the text] contains a phrase that is unambiguous -- that has a clearly accepted meaning in both legislative and judicial practice -- we do not permit it to be expanded or contracted by the statements of individual legislators or committees during the course of the enactment process."

[12] Justice Scalia has often insisted that the text of a statute is the *only* proper source for determining its meaning.

(continued...)

Members of this Court have long warned against judicial lawmaking in the guise of interpreting statutes. *See, e.g.*, Frankfurter, *Some Reflections on the Reading of Statutes*, 47 Columbia L. Rev. 527, 533-34 (1947). When the Court interprets a statute that Congress has drafted broadly, that breadth should be honored.[13] *E.g.*, *Russello v. United States*, 464 U.S. 16, 21-22 (1983) (rejecting a narrow interpretation that would have redefined "interest" in RICO to mean "interest *in the enterprise*"); *see also Sedima, S.P.R.L., v. Imrex Co., Inc.*, 473 U.S. 479 (1985) (refusing to add "prior-conviction" or "racketeering injury" requirements to RICO). It is not the courts' proper role to impose unwritten limitations on a statute that Congress has drafted broadly. *See, e.g.*, *Gollust v. Mendell*, ___ U.S. ___, 111 S.Ct. 2173, 2178 (1991) (contrasting narrowly-drawn provisions of securities act with other broad terms in the statute and refusing to engraft any conditions that Congress did not see fit to impose).

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[12] (...continued)

> It is our task...not to enter the minds of the Members of Congress -- who need have nothing in mind in order for their votes to be both lawful and effective -- but rather to give fair and reasonable meaning to the text of the United States Code....

Pennsylvania v. Union Gas Co., 491 U.S. 1, 30 (1989) (Scalia, J., concurring); *see also I.N.S. v. Cordoza-Fonseca*, 480 U.S. at 452-54 (Scalia, J., concurring) (courts are not free to replace the language of a law with an "unenacted legislative intent").

[13] Judicial activism in interpreting statutes is particularly inappropriate when a statute is of recent origin and its text is detailed. *See* Eskridge, *Dynamic Statutory Interpretation*, 135 U. Pa. L. Rev. 1479, 1496-97 (1979).

When a statute is unambiguous, its text ends the inquiry, for it is a time-honored rule that legislative history will not be used to find an ambiguity when one does not appear in the text of the statute itself. *Wisconsin Railroad Commission v. Chicago, Burlington & Quincey R.R.*, 257 U.S. 563, 589 (1922) (legislative history is "only admissible to solve doubt, not to create it"); *see also Caminetti v. United States*, 242 U.S. 470, 485 (1917) ("Where the language is plain and admits of no more than one meaning the duty of interpretation does not arise....") (citation omitted).

The Court has said that "[t]he responsibility for the justice or wisdom of legislation rests with the Congress, and it is the province of the courts to enforce, not to make, the laws." *United States v. First Nat'l Bank*, 234 U.S. 245, 260 (1914) (citations omitted). In interpreting statutes, courts must exercise caution to "avoid the usurpation" of the legislature's law-making power. *Crooks v. Harrelson*, 282 U.S. 55, 60 (1930). "[W]renching from the words of a statute a meaning which they literally did not bear" brings a court too close to the boundary between the judicial and legislative powers; even if a law is thought to be unwise, overly broad or "otherwise objectionable," the proper place to remedy it is "with the law making authority, and not with the courts." *Id.* at 60; *see also Sedima*, 473 U.S. at 499 ("this defect -- if defect if is -- is inherent in the statute as written, and its correction must lie with Congress.").

2. This Court Has Recognized RICO's Breadth and Rejected Non-Textual Limitations of RICO

Each time this Court has been faced with the task of determining the scope of RICO, it has followed the established principles of statutory construction, looking first at the plain language of the statute. *E.g.*, *Reves*, 113 S.Ct. at 1169; *H.J., Inc. v. Northwestern Bell Telephone Co.*, 492 U.S. 229, 239 (1989); *Turkette*, 452 U.S. at 580. The Court has recognized that RICO is meant to be broad, not crabbed in its reach; Congress statutorily directed that RICO "be liberally construed to effectuate its remedial purposes." Pub. L. 91-452, § 904(a), 84 Stat. 947, (1970) 91st Cong. 2d Sess., reprinted in 1970 U.S.C.C.A.N. 1104; note following 18 U.S.C. § 1961. *See, e.g.*, *Turkette*, 492 U.S. at 249 (noting RICO's "'self-consciously expansive language and overall approach'"); *Sedima*, 473 U.S. at 498 (acknowledging Congress's "express admonition" to construe RICO liberally). The Court has emphasized that RICO was not meant to have a "pinched construction." *H.J.*, 492 U.S. at 249. In drafting RICO, Congress chose words that convey "concepts of breadth." *Russello*, 464 U.S. at 21.

Section 1962(c), under which this case is brought, makes no mention of motive, economic or otherwise. (The only arguably "economic" aspect of § 1962(c) is the jurisdictional requirement that the enterprise affect interstate commerce.) Nonetheless, the lower courts held that RICO requires that either the enterprise or the predicate acts have an economic motive.[14] Pet. A-2, A-32. The Seventh

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[14] In requiring an economic motive, the Seventh Circuit relied heavily on *United States v. Ivic*, 700 F.2d 51 (2d Cir. 1983). (continued...)

Circuit did not -- and could not -- cite any portion of the statute where this requirement appears. We submit that the court tacitly conceded the lack of any statutory authority when it held that an economic motive in *either* the enterprise *or* the predicate acts of racketeering would satisfy the court's requirement: the enterprise need not be economically motivated (as long as the predicate acts are), and the predicate acts need not be economically motivated (as long as the enterprise is).

Quoting one of its earlier decisions, the Seventh Circuit said, "'[W]e do not think the general principles of RICO can be used to stretch § 1962(c) to reach this situation in the face of the subsection's own limits.'" Pet. A-31. Yet, the Seventh Circuit gave no hint as to which "limits" it was referring, since it made no reference to any limiting word or phrase in § 1962(c), or anywhere else for that matter. The court said it was adopting the "economic motive" requirement as a way of "merely fleshing out the definition of [RICO's] elements," Pet. A-32, but never specified the "elements" it was supposedly "fleshing out." The court also failed to explain why terms that were already defined in § 1961 required further definition.

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[14] (...continued)
However, *Ivic* was based largely on the Second Circuit's concern with "prosecutorial zeal" and the expansive use of RICO, *id.* at 65, a concern that this Court soundly rejected when it reversed another decision of the Second Circuit in *Sedima*, 473 U.S. 479, two years later.

3. RICO Makes No Mention of Economic Motives

The plain language of § 1962(c) does not impose any "economic motive" requirement on the enterprise, the predicate acts or anything else. Furthermore, the statute's detailed definitions of "enterprise" and "racketeering activity" do not give even a hint that they require an "economic motive." In fact, the definitions prove the opposite. As this Court observed of RICO's "enterprise" definition,[15] "we...perceive no uncertainty in the meaning to be attributed to the phrase, 'any union or group of individuals associated in fact'...." *Turkette*, 452 U.S. at 581. The fact that RICO enterprises are not limited to "business" enterprises or profit-seeking enterprises is also established by the definition, which includes "*any*" individual, partnership, corporation, association, union, or "group of individuals associated in fact," with no reference to money or profits. *See* 18 U.S.C. § 1961(4).[16]

In addition to the lucid statutory definition of "enterprise" provided by Congress, common usage and understanding reinforce the breadth of the term. "Enterprise" encompasses any "venture, undertaking, project" or "any systematic purposeful activity or type of activity." *Webster's Third New International Dictionary*

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[15] Section 1961(4) provides:

> "enterprise" includes any individual, partnership, corporation, association, or other legal entity, and any union or group of individuals associated in fact although not a legal entity. . . .

[16] Unless otherwise indicated, emphasis in quoted material has been supplied.

757 (1971).[17] In its normal usage, "enterprise" includes virtually any type of organized venture. In *Russello*, 464 U.S. at 21, the Court emphasized how the term "enterprise" in RICO is a concept of breadth, and in *Turkette*, the Court, we thought, put any doubt about the breadth of the term "enterprise" firmly to rest:

> *There is no restriction upon the associations embraced by the definition*: an enterprise includes *any* union or group of individuals associated in fact.

452 U.S. at 580. The parallel between the lower court's view of enterprise and the view rejected by this Court in *Turkette* is striking. *Turkette* flatly refused to limit "enterprise" to "legitimate enterprises" because the language of the statute did not warrant such a restriction. *Id.* at 585. Likewise here, nothing in the statutory definition of "enterprise" suggests that a RICO enterprise must be an "economic" or "business" entity. There is no statutory limitation as to the enterprise's motive, purpose or goal. Had Congress chosen RICO to reach only "business" or profit-seeking enterprises, it easily could have narrowed the definition by inserting an extra word or two, such as "business" or "profit-seeking." *Cf. Turkette*, 452 U.S. at 580-81 (had Congress intended to exclude illegitimate enterprises from RICO, it could have added the word "legitimate" to the definition of enterprise). The plain

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[17] These broad definitions are consistent with the structure and common purpose required to make a RICO enterprise distinct from a pattern of racketeering activity. *See Turkette*, 452 U.S. at 583. *Turkette* explained that an enterprise is proved "by evidence of an ongoing organization, formal or informal," and "by evidence that the various associates function as a continuing unit." *Id.*

language of the statute should end the inquiry here: a RICO enterprise need not have an economic motive.

It is hard to imagine anything clearer than the definition of "racketeering activity" in RICO. Section 1961(1) states definitively what "'racketeering activity' *means*...," and defines racketeering activity as any act indictable under specified criminal statutes, including murder, kidnaping, arson, and extortion.[18] The criminal acts that constitute

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[18] Section 1961(1) provides:

> "racketeering activity" means (A) any act or threat involving murder, kidnaping, gambling, arson, robbery, bribery, extortion, or dealing in narcotic or other dangerous drugs, which is chargeable under State law and punishable by imprisonment for more than one year; (B) any act which is indictable under any of the following provisions of title 18, United States Code: Section 201 (relating to bribery), section 224 (relating to sports bribery), sections 471, 472, and 473 (relating to counterfeiting), section 659 (relating to theft from interstate shipment) if the act indictable under section 659 is felonious, section 664 (relating to embezzlement from pension and welfare funds), sections 891-894 (relating to extortionate credit transactions), section 1084 (relating to the transmission of gambling information), section 1341 (relating to mail fraud), section 1343 (relating to wire fraud), section 1503 (relating to obstruction of justice), section 1510 (relating to obstruction of criminal investigations), section 1511 (relating to the obstruction of State or local law enforcement), section 1951 (relating to interference with commerce, robbery, or extortion), section 1952 (relating to racketeering), section 1953 (relating to interstate transportation of wagering paraphernalia), section 1954 (relating to unlawful welfare fund payments), section

(continued...)

racketeering are not limited to crimes that are intrinsically economically motivated. In fact, three of the first four acts listed in § 1961(1) have no necessary relation to money at all: murder, kidnap and arson are crimes regardless of whether money is involved.[19] The clarity of the definition of racketeering activity contrasts with certain other definitions such as the description of what, at a minimum, a "pattern" of racketeering activity "requires." 18 U.S.C. §1961(5); *see H.J.*, 492 U.S. at 237. The definition of racketeering activity contains no ambiguity and leaves open no possibility that additional limitations may apply. Because the crimes that comprise racketeering activities do not require an economic motive -- and many of them do not intrinsically involve money at all -- it defies the statutory

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[18] (...continued)

> 1955 (relating to the prohibition of illegal gambling businesses), sections 2314 and 2315 (relating to interstate transportation of stolen property), sections 2341-2346 (relating to trafficking in contraband cigarettes), sections 2421-24 (relating to white slave traffic), (C) any act which is indictable under title 29, United States Code, section 186 (dealing with restrictions on payments and loans to labor organizations) or section 501(c) (relating to embezzlement from union funds), or (D) any offense involving fraud connected with a case under title 11, fraud in the sale of securities, or the felonious manufacture, importation, receiving, concealment, buying, selling, or otherwise dealing in narcotic or other dangerous drugs, punishable under any law of the United States[.]

[19] Many of the other predicate acts specified in § 1961(1) have no intrinsic relationship to money, either, *e.g.*, obstruction of justice, § 1503.

language to limit racketeering activity to acts that are motivated by money.

B. The Structure of OCCA and Its Subpart, RICO, Also Shows that Economic Motive Is Not an Element of a RICO Offense

1. While Other Parts of OCCA Limit Their Coverage to "Business Enterprises," RICO Does Not

Expanding the textual analysis beyond the provisions of § 1962(c) to examine the statute of which RICO is a part underscores the fact that RICO does not require an economic motive. This Court has held that the presence of limiting language in one section of a statute and its absence in another demonstrates Congress's intention to limit the reach of one section but not the other, *e.g.*, *Russello*, 464 U.S. at 23. An analysis of the Organized Crime Control Act of 1970 ("OCCA"), of which RICO is one title, shows that while other portions of the statute are limited to profit-seeking ventures, RICO is not.[20]

Congress's choice of the term "enterprise" in RICO contrasts with other less inclusive terms used elsewhere in OCCA. For example, 18 U.S.C. § 2516(1)(c) authorizes interception of electronic communications that may provide evidence of, *inter alia*, "*business* enterprises of gambling." *See also* 18 U.S.C. § 842, making it unlawful to engage in the unlicensed *business* of importing explosives. Section

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[20] RICO is Title IX of OCCA.

1961(4), by contrast, does not limit RICO to "business enterprises" and expressly includes "associations in fact," which need not be legal entities at all, much less "business" entities. When Congress wants to limit the enterprises within the statute's scope, it knows how to do so. It imposed no such limit on RICO.

2. The Structure of RICO's Subsections Demonstrates the Breadth of § 1962(c)

The structural analysis offered by the Seventh Circuit to justify requiring that a RICO enterprise have an economic motive actually proves the opposite. In reaching its conclusion that § 1962(c) requires an economic motive, the Court relied on *Ivic* and reasoned that, first, because § 1962(a) requires the "investment of income" into the enterprise and § 1962(b) requires the defendant to acquire an "interest in or control of" the enterprise, the enterprise must be "an organized profit-seeking venture." Pet. A-28.[21] Next, it reasoned that Congress must have intended

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[21] Title 18 U.S.C. § 1962(a) provides in relevant part:

> It shall be unlawful for any person who has received any income derived, directly or indirectly, from a pattern of racketeering activity ... to use or invest, directly or indirectly, any part of such income, or the proceeds of such income, in acquisition of any interest in, or the establishment or operation of, any enterprise which is engaged in, or the activities of which affect, interstate or foreign commerce....

Title 18 U.S.C. § 1962(b) provides:

(continued...)

that an "enterprise" subject to § 1962(c) be capable of violating subsections (a) and (b). Therefore, the Seventh Circuit concluded, all RICO enterprises must be profit-seeking. Pet. A-28. The Seventh Circuit's analysis is flawed in several respects.

First, its initial premise is incorrect: while § 1962(a) prohibits the investment of racketeering income in an enterprise, it does not require that the *enterprise* be economically motivated, much less "profit-seeking." For example, income from predicate acts could easily be invested to establish and operate a non-profit-seeking enterprise designed to start race wars in our country, to punish those who oppose Croatian independence, to blow up public buildings and tunnels in Manhattan, or to fulfill the goals of a militant sect that believes Armageddon has come. Section 1962(a) puts no restriction on the type of enterprise into which the income may be invested, and it is all too obvious that most not-for-profit organizations require the investment of some money, just like profit-seeking organizations.[22]

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[21] (...continued)

> It shall be unlawful for any person through a pattern of racketeering activity or through collection of an unlawful debt to acquire or maintain, directly or indirectly, any interest in or control of any enterprise which is engaged in, or the activities of which affect, interstate or foreign commerce.

[22] In the briefs filed in the Seventh Circuit, defendant Migliorino conceded the economic nature of such entities, saying, "the realities of political activism requires [sic] the realistic expenditure of money, generation of budgets, the making of fund-raising appeals, and the (continued...)

Likewise, the prohibition in § 1962(b) against acquiring or maintaining an interest in, or control of, an enterprise through a pattern of racketeering activity is not restricted to profit-seeking ventures. It plainly prohibits taking over a legitimate charity (such as a church) through a pattern of racketeering, and it prohibits controlling an illegitimate enterprise through such a pattern as well. For example, one may maintain control of a terrorist organization by leading its militant band on criminal rampages regardless of whether the organization issues stock or pays taxes. There is simply nothing in §§ 1962(a) or (b) that limits an enterprise subject to those prohibitions to "profit-seeking" entities in which one may hold a "property" interest.[23]

But even if the "investment of money" requirement of § 1962(a) and the "interest in or control of" requirement of § 1962(b) were properly viewed as limitations on the type of enterprise subject to those subsections, the lack of any such requirement in § 1962(c) only underscores the fact that § 1962(c) is not so limited. The "investment in" and "interest in or control of" requirements are not part of the definition of "enterprise," which applies to all of RICO, *see* § 1961(4); they are elements of §§ 1962(a) and (b). It is the "investment" requirement of § 1962(a) that supplies the economic element there, and the "interest in or control of" requirement of § 1962(b) that (arguably, albeit improbably)

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[22] (...continued)
incurring of operational costs." Brief at 16. *See also* Migliorino's Brief in Opposition to Petition for Writ of Certiorari, at 13.

[23] *See also* Cook, *Businessmen with Halos*, 146 *Forbes* 100 (Nov. 26, 1990) (discussing how non-profit organizations that accumulate surplus funds typically disburse such funds to their employees in the form of salaries and perks like travel allowances, low-interest loans and posh quarters).

adds a financial dimension there. These elements are conspicuously absent from § 1962(c) and from the definition of "enterprise" in § 1961(4). The presence of economic limits in subsections (a) and (b) and the absence of such limits in subsection (c) shows Congress's intent that subsection (c) reach more broadly.

The proposed text of RICO that made its way through Congress also shows that Congress added § 1962(c) to broaden the original bill; the earlier version contained only predecessors of §§ 1962(a) and (b). *Compare* S. 1861 (1969) *with* S. 1623, 91st Cong., 1st Sess. § 2 (1969). Section 1962(c) unquestionably reaches illegitimate criminal enterprises, like PLAN, regardless of whether their structures allow formal "investments" in them. *See Russello*, 464 U.S. at 24. Even if the Seventh Circuit were right in concluding that §§ 1962(a) and (b) are limited to profit-seeking entities, § 1962(c) -- which does not require either the investment of money or the maintenance of an interest in or control of the enterprise -- is not so limited. *Cf. Turkette*, 452 U.S. at 584 (rejecting lower court's premise that if §§ 1962(a) and (b) were limited to *legitimate* enterprises, § 1962(c) would have to be similarly limited).

3. The Only "Economic" Requirement in RICO is Economic Effects

Although the text of RICO shows no concern for "economic motive," Congress did emphasize the requirement of economic *effects*. In drafting RICO, Congress's chief concern was with the *effects* of organized criminality on the nation's economy. Such crime "drains billions of dollars from America's economy by unlawful conduct and the illegal use of force, fraud, and corruption"

and "weaken[s] the stability of the Nation's economic system,...seriously burden[s] interstate and foreign commerce, threaten[s] the domestic security, and undermine[s] the general welfare of the Nation and its citizens[.]" Statement of Findings and Purpose, Pub. L. No. 91-452, 84 Stat. 922 (1970), 91st Cong., 2d Sess., reprinted in 1970 U.S.C.C.A.N. 1073. As one sponsor of the original RICO bill, S. 1623, stated:

> The proper functioning of a free economy requires that economic decisions be made by persons free to exercise their own judgment. *Force or fear limits choice, ultimately reduces quality, and increases prices.*

115 Cong. Rec. 6993 (1969).

Congress's concern with the *effects* of racketeering activities -- not the motivations -- is evident in RICO's text and structure.[24] First, § 1962(c) applies only to

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[24] Even the Second Circuit, which purported to discover the economic motive requirement in *United States v. Ivic*, 700 F.2d 51 (2d Cir. 1983), recognized a few months later in *United States v. Bagaric*, 706 F.2d 42 (2d Cir.), *cert. denied*, 464 U.S. 840 (1983), that it was the *effect* on the national economy that defined conduct actionable under RICO:

> Whether appellants extorted money for the long-term political purpose of effecting the separation of Croatia from Yugoslavia, whether this formed part, but not all, of their "motivation," or whether the freedom of their former province is an issue they care about not at all, the *effect* of their activities on the national economy is

(continued...)

enterprises "engaged in, or the activities of which *affect, interstate or foreign commerce.*" 18 U.S.C. § 1962(c). The concern with economic effects is also reflected in § 1964(c), which provides that only a person "injured in [its] *business or property* by reason of a violation of section 1962" may sue. 18 U.S.C. § 1964(c). These are the only "economic" requirements that are true to the text and structure of § 1962(c) and that reflect Congress's concerns with criminal conduct that interferes with the nation's economy. In contrast, RICO contains no expression of concern with the motivations, purposes or goals of the criminals who organize or carry out the criminal acts.

There is no question that PLAN is a highly-organized enterprise engaged in interstate commerce. J.A.65 (¶95), 71(¶99). Even the lower court acknowledged the extensive injury to business and property that NOW and the clinics have suffered from the defendants' predicate crimes. Pet. A-34-35. *See also* J.A.72 (¶¶104-05).[25] In short, the

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[24] (...continued)

> identical. The *Ivic* court described RICO as a device to prevent (and reverse) "the drain[ing of] billions of dollars from America's economy by unlawful conduct...." This effect is accomplished whatever considerations compel the creation and execution of an extortion scheme.

706 F.2d at 54 (citation omitted).

[25] After acknowledging how the defendants' crimes increased the plaintiffs' costs of doing business, while at the same time raising funds for themselves, the court said, "we do not contest that the defendants' activities had an economic effect on the plaintiffs, we simply refuse to equate that effect with the economic motive required by *Ivic* and its progeny." A-33-34.

economic effects and threat to domestic security about which Congress expressed concern in enacting RICO have materialized in the nationwide pattern of organized criminal acts committed by these defendants and the mobs they lead. Through their violent acts of intimidation and destruction, the defendants have put women's health clinics out of business; obstructed the daily operations of clinics; prevented patients from obtaining reproductive health services; and multiplied insurance and security costs, laboratory fees, rents, and ultimately consumer costs. They have threatened, kidnaped and harassed clinic employees and doctors -- and worse. *E.g.*, J.A.50 (¶42); 50-51 (¶44); 54-55 (¶55); 56 (¶59); 66 (¶97); 72 (¶105); 76 (¶122); 77 (¶125). Their crimes have resulted in the limited choices and increased prices against which the RICO sponsors warned. These economic effects readily satisfy the "economic" requirements of this legislation.

The structure of OCCA, including RICO's emphasis on economic impact, not motives, confirms the breadth of RICO's text: it is not limited to economic crimes or enterprises.

C. The Legislative History of RICO Does Not Contradict the Plain Language of Its Text; In Fact, It Shows that RICO Extends to Entities and Crimes that Are Not "Profit-Seeking"

In this case, there is no uncertainty or ambiguity about "economic motive" in the text, and so there is no need to consult RICO's legislative history. But even if there were, the legislative history confirms the textual and structural analyses establishing that there is no economic motive requirement.

On the occasions when it consults legislative history, the Court looks to see if there is a *clearly expressed* legislative intent different from the words of the statute. *E.g.*, *I.N.S. v. Cordoza-Fonseca*, 480 U.S. at 432 n.12. In the absence of such a "'clearly expressed legislative intent to the contrary,'" the language of the statute itself is conclusive. *Turkette*, 452 U.S. at 580 (citation omitted). The presumption that the plain meaning of the language in a statute expresses legislative intent may be rebutted only in "rare and exceptional circumstances." *Ardestani v. I.N.S.*, ___ U.S. ___, 112 S.Ct. 515, 520 (1991) (quoting *Rubin v. United States*, 449 U.S. 424, 430 (1981)).

Over the years, various attempts have been made to persuade the courts to limit RICO to the litigants' concept of the conduct at which RICO was aimed. In response, this Court has declared in no uncertain terms that RICO means what it says. In *Sedima*, 473 U.S. at 499, for example, the Court laid to rest the notion that Congress intended RICO to apply only to the Mafia or traditional ideas of "organized crime." Even if it were true that organized criminality in profit-seeking enterprises were Congress's chief concern, because the statute is not limited to those enterprises, it is not for the courts to impose such a limitation. As Representative Poff, a sponsor of RICO, explained when answering critics who sought to limit RICO to the Mafia:

> It is true that there is no organized crime definition in many parts of the bill. This is, in part, because it is probably impossible precisely and definitively to define organized crime. But if it were possible, I ask my friend, would he not be the first to object that in criminal law we establish procedures which

> would be applicable only to a certain type of defendant?

116 Cong. Rec. 35, 204 (1970). This Court has observed that "Congress drafted RICO broadly enough to encompass a wide range of criminal activity...likely to attract a broad array of perpetrators...." *H.J.*, 492 U.S. at 248. Corrupt government officials and political or ideological terrorists, as much as Mafia kingpins, have been and should continue to be subject to the statute. The legislative history of RICO does not reveal any congressional intent that RICO should be limited to profit-seeking businesses or to criminals whose acts are driven by monetary concerns any more than it is limited to the Mafia.

The legislative evolution of RICO demonstrates Congress's intent that the statute cover both profit-seeking and non-profit-seeking ventures and acts. Congress had an opportunity to inject an economic motive requirement into RICO and chose not to do so: an earlier version of the bill would have limited RICO to "business enterprises." Instead, Congress enacted a statute containing the generic and broad term "enterprise," and defined that term omitting any reference to "business." *Compare* S. 1623, 91st Cong., 1st Sess. § 2 (1969) *with* 18 U.S.C. § 1961(4). Where Congress deletes limiting language from an earlier version of a bill prior to its enactment, it may be presumed that Congress intended the deletion. *Russello*, 464 U.S. at 23-24.[26] It must be assumed, therefore, that Congress

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[26] A further indication that Congress did not intend to include an economic motive requirement in RICO appears in the legislative history of proposed § 1962(e). That subsection would have provided: "A violation of the section shall be deemed to continue so long as the

(continued...)

omitted the "business enterprise" limitation because it wanted RICO to cover both enterprises that were businesses and those that were not. The Seventh Circuit ignored this legislative history when it claimed to find support for its "economic motive" requirement in Congress's "emphasis on business" in RICO, Pet. A-32, and when it assumed that the term "enterprise" "conveys a restriction to economic entities." Pet. A-31.

Congress's intent that RICO cover non-profit-seeking enterprises also appears in the statements of RICO-sponsor Senator McClellan, who expressed concern with racketeering *wherever* it may be found, including in charities, foundations, governmental agencies and other non-commercial entities. 116 Cong. Rec. 592, 601, 606 (1970) (Partial List of Entities in Which Organized Crime Has Been Active and comments of RICO sponsors on corruption of public officials, law enforcement officers, judges, and prosecutors).[27] RICO cannot be redrafted by the courts to cover only profit-seeking ventures where both the text of RICO and its legislative history show that it was meant to cover non-economic entities as well.

In defining "racketeering activity," Congress expressly included crimes that need not involve money, far less a

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[26] (...continued)
person who committed the violation continues to receive any benefit from this violation." S. 30, 91st Cong., 1st Sess. § 1962(e) (1969), reprinted in Senate Report, No. 617, 91st Cong., 1st Sess. 1-2 at 159. However, this provision too was deleted from the bill before enactment.

[27] Non-profit organizations are equally subject to the antitrust laws, on which RICO was modeled. *See Goldfarb v. Virginia State Bar Ass'n*, 421 U.S. 773, 786-87 (1975). (*Sedima*, 473 U.S. at 489-90, noted RICO's reliance on the antitrust laws.)

subjective profit-seeking "motive." Congress further evidenced its intention for RICO to reach non-economic crimes by rejecting an amendment that would have excluded from RICO's predicate acts certain forms of non-violent protest not undertaken for commercial gain.[28] S. 438, 101st Cong., 1st Sess., § 3(e). *See Flood v. Kuhn*, 407 U.S. 258, 283 (1972) (Congress's decision not to enact legislation was more than "mere Congressional silence and passivity"). It would be particularly inappropriate for the courts to impose the very requirement that Congress did not see fit to impose.

The text, the structure and legislative history of RICO all demonstrate that neither the enterprise nor predicate acts require an economic motive. In fact, most of the circuit courts of appeals have held defendants liable under RICO despite the absence of economically-motivated enterprises or predicate acts. *E.g.*, *Northeast Women's Center, Inc. v. McMonagle*, 868 F.2d 1342 (3d Cir.), *cert. denied*, 493

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[28] The relevant portion of Senate Bill 438, which Congress rejected, stated as follows:

> (e) For purposes of this chapter, the term "racketeering activity" shall not include participation in, or the organization nor support of, any non-violent demonstration, assembly, protest, rally or similar form of public speech undertaken *for reasons other than economic or commercial gain or advantage*, and no action may be maintained under this chapter based on such activities.

S. 438, 101st Cong., 1st Sess., § 3(e) (1989). As Congress declined to exclude *non-violent* predicate acts that lack a profit motive, Congress certainly would not exclude *violent* crimes not committed for money.

U.S. 901 (1989) (enterprise opposed to abortion; extortionate acts aimed at closing clinics); *United States v. Yarbrough*, 852 F.2d 1522 (9th Cir. 1988) (group dedicated to "direct action" against non-whites and non-Christians with goal of overthrowing government; predicate act of murder of Jewish radio talk show host); *United States v. Ellison*, 793 F.2d 942 (8th Cir. 1986), *cert. denied*, 488 U.S. 866 (1988) (white supremacist group committing arson against churches that had homosexual members and against Jewish community center); *United States v. Qaood*, 777 F.2d 1105, 1116 (6th Cir.), *cert. denied*, 475 U.S. 1098 (1985) (government office); *United States v. Bagaric*, 706 F.2d 42 (2d Cir. 1983) (Croatian nationalists); *United States v. Dickens*, 695 F.2d 765 (3d Cir. 1982), *cert. denied*, 460 U.S. 1092 (1983) (Black Muslim group); *United States v. Altomare*, 625 F.2d 5, 7, n.7 (4th Cir. 1980) (prosecutor's office); *United States v. Grzywacz*, 603 F.2d 682, 687 (7th Cir. 1979), *cert. denied*, 446 U.S. 935 (1980) (government officials).[29] *See also Feminist Women's Health Center v. Roberts*, No. C86-161, 1989 WL 56017 (W.D. Wash., May 5, 1989) (rejecting economic motive requirement for anti-abortion group that tried to close women's health clinic that performed abortions).

This Court has cautioned repeatedly against judicial revision of the statute and has held that any restrictions on RICO must come from Congress, not the courts. *H.J.*, 492 U.S. at 249 (rejecting "multiple criminal schemes" and "organized crime" requirements and stating: "rewriting

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[29] Justice Stevens has often urged the Court to refrain from overriding a decision that the lower courts have unanimously followed. *E.g.*, *McNally v. United States*, 483 U.S. 350, 376 (1987) (Stevens, J., dissenting).

[RICO] is a job for Congress, if it is so inclined, and not for this Court"); *Russello*, 464 U.S. 16 ("interest" requirement is not limited to "interest in the enterprise"); *Turkette*, 452 U.S. at 587 (holding that RICO is not limited to "legitimate enterprises" and stating: "the courts are without authority to restrict the application of the statute"). *See also Holmes v. Securities Investor Protection Corp.*, ___ U.S. ___, 112 S.Ct. 1311, 1323 (1992) (O'Connor, J., concurring) (RICO has no purchaser/seller standing requirement where predicate acts are securities law violations). Applying these principles here, the Seventh Circuit's decision creating an economic motive requirement for RICO must be reversed.

D. An "Economic Motive" Requirement Would Create a Litigation Nightmare

The Seventh Circuit's "economic motive" requirement is vague, not only in its failure to specify its source, but also in its failure to prescribe how much economic motive is required, and whether it must appear in the animating inner needs and emotions of the defendants, their means, their ultimate goal, or somewhere else. Moreover, the Seventh Circuit's economic motive requirement is internally inconsistent. It ignores the unmistakable economic motive of PLAN to impose enormous costs on the clinics and drive them out of business and instead focuses only on the supposed need for a profit-seeking "motive" by PLAN's criminal enterprise or actions.

One thing is clear, however, from the court's application of its requirement to this case. The Seventh Circuit's "economic motive" requirement demands a subjective and dangerous inquiry that is far more

problematic than the objective economic "dimension" required by the Second Circuit in *Bagaric*, 706 F.2d 42, and *United States v. Ferguson*, 758 F.2d 843 (2d Cir.), *cert. denied*, 474 U.S. 1032 (1985), which itself has no support in the statutory text, structure or legislative history of RICO.[30]

Bagaric, retreating from the motives-based inquiry in *Ivic*, limited its non-textual requirement to "some" *objectively*-determined "financial purpose" or "economic dimension" and correctly observed that nothing in RICO or the list of predicate criminal acts requires an inquiry into motives or purposes. 706 F.2d at 53, n.11. Even *Bagaric* recognized that RICO does not and should not demand an inquiry into something as subjective as "mens rea" or "motives" and expressed great discomfort with a "motive" requirement of any sort:

> We purposely highlight our use of the word "motivated." As the test makes clear, we are troubled by the notion, advanced by appellants, that the Government will be required to prove the animating or long-run objective of a RICO enterprise was economic, apparently to the exclusion of other, collateral "motives."

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[30] While an "economic" requirement occasionally appears in *dicta* in Eighth Circuit opinions, it seems to focus on objective "goals." *E.g.*, *United States v. Anderson*, 626 F.2d 1358, 1372 (8th Cir. 1980), *cert. denied*, 450 U.S. 912 (1981). *But see United States v. Clark*, 646 F.2d 1259, 1263 (8th Cir. 1981) (government agency can be an enterprise); *Ellison*, 793 F.2d 942 (organization with non-economic purpose that commits non-economic predicate acts is subject to RICO).

> *It is clear that § 1962 does not, by its terms, require proof of ultimate improper economic motive....*

706 F.2d at 53 n.11. A "motive" requirement, *Bagaric* explained, would unnecessarily "politicize" and "inflame" the case; it would allow the defendants "to inject peripheral political and religious considerations into the trial," to "patronize the jury and to add a distracting element of emotionalism to the proceedings"; and it "would authorize the admission of evidence of political beliefs, racial animosities, and family and blood feuds as justification for criminal acts." 706 F.2d at 54-55. If defendants were allowed to offer their "good motives" as a defense to their illegal conduct, the battle over motives could dominate discovery and trial. *Id.*[31]

The Seventh Circuit's economic motive requirement entails all these problems and more. Because the court acknowledged the well-pled facts concerning the vast sums of money the defendants and their enterprise have derived from their crimes, it is clear that some objective economic dimension is not enough to satisfy the Seventh Circuit's standard. Instead, it appears that the Seventh Circuit requires that the ultimate or overriding subjective

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[31] In the antitrust context, the courts have repeatedly observed how unnecessary and burdensome a "motives" inquiry would be to the orderly progress of a case through discovery and trial. *See N.C.A.A. v. Board of Regents*, 468 U.S. 85, 101 n.23 (1984) ("good motives will not validate an otherwise anticompetitive practice."); *Federal Trade Commission v. Superior Court Trial Lawyers' Ass'n*, 493 U.S. 411, 424 (1990) (holding that "[t]he social justifications proffered for [the conduct] do not make it any less unlawful").

motivation behind either the enterprise or the predicate acts must be money.[32]

If an ultimate or overriding economic motive were required, in addition to proof of the four statutory elements required by the text of § 1962(c), *see Sedima*, 473 U.S. at 496, plaintiffs would have to present proof of all the financial benefits the defendants obtain from their criminal activities and their enterprise, and the defendants would attempt to rebut that evidence by offering evidence of their personal political, religious, social and other motives, trying to demonstrate that these motives dwarf the economic incentives that their crimes provide. The courts would have to address the serious problem of how "overriding" or "significant" the economic motive need be: Does a million dollars a year establish sufficient economic motive? Does it matter that the recipient was barely scraping by before? Can an economic motive be "overridden" by a very sincere political, social or religious belief?[33] What if other motives also exist, such as personality disorders or

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[32] Defendant Migliorino's restatement of the issue presented for review apparently agrees with this reading. Defendant Terry's Brief in Opposition to Petition for Writ of Certiorari argues that *any* economic motive, even an insignificant one, is sufficient. (Brief at 12-13) If this were true, however, the Seventh Circuit should have allowed plaintiffs to proceed with discovery and trial because even preliminary discovery showed that money is at least one of the motives for the defendants' enterprise and crimes.

[33] For example, Terry would no doubt argue that his transition from the income of a used-car salesman to nearly a million dollars a year as the head of Operation Rescue is insignificant when compared to the satisfaction he receives from the expression, through his crimes, of his personal religious beliefs about what women should do with their bodies. How would the fact-finder weigh and balance these motives and incentives under the Seventh Circuit's standard?

psychiatric problems, racial or religious animosities, the desire to control women's reproductive capacities, or the desire to make more children available for adoption or foster care?[34] What should the court do when, as in *Yarbrough*, 852 F.2d 1522, white supremacists commit financial crimes as a *means* to further their non-economic ultimate goal: the eradication (by murder in some cases) of African-Americans and Jews? (The Ninth Circuit found the murder a predicate act, even though neither it nor the enterprise was primarily or ultimately aimed at money.) Would only "good motives" count, and, if so, who would determine which were good? On what scale would a fact-finder weigh the competing motives to determine which is ultimate, overriding or sincere? If the floodgates to such issues were opened, week-long trials would turn into months-long excursions into the workings of the human mind; psychiatric experts would become commonplace in RICO trials.

Requiring a subjective inquiry into the psychological aspects of criminal acts as an element of crimes is not common in our system of justice. While some statutes (generally those outlawing discrimination) require a finding of "purpose" for liability, *e.g.*, 42 U.S.C. § 1985(3) (and this is typically established by circumstantial evidence), and criminal statutes typically require either a specific or a general intent to do the act that constitutes the violation, *see*

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[34] The World Trade Center bombers may well be sincere. The Croatian nationalists in *Bagaric* were likely sincere about their political views concerning Yugoslavia. The skinheads in *Ellison* no doubt sincerely hated African-Americans and Jews. Would these "sincere" beliefs outweigh their enjoyment of the other benefits they received from their terrorist acts? More importantly, would it nullify the *effects* of all the economic destruction they caused?

Holmes, *Privilege, Malice and Intent*, 8 Harvard L.Rev. 1, 12 (1894), the distinction between these concepts and the purely subjective concept of "motive" is an important one.[35] According to *Black's Law Dictionary* at 1164, Fourth Edition (1968),

> in the popular mind intent and "motive" are not infrequently regarded as one and the same thing. In law there is a clear distinction between them. "Motive" is the moving power which impels to action for a definite result. Intent is the purpose to use a particular means to effect such result. "Motive" is that which incites or stimulates a person to do an act.

While the requirement of "intent" to commit the predicate acts is already inherent in RICO (and is readily satisfied here),[36] a separate and subjective "motive" requirement

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[35] In the antitrust context, commentators have discussed the importance of distinguishing among "motives," "intent" and "purpose." *E.g.*, Coons, *Non-Commercial Purpose as a Sherman Act Defense*, 56 Northwestern L.Rev. 705, 710-11 (1962). Under this analysis, "motive" is the *subjective* aspect of a defendant's will and represents the inner needs, emotions and organic state that incites the defendant to action. *Id.* at 710. "Intent" focuses on the means that the defendant consciously or deliberately uses, without reference to defendant's anterior subjective motives or objective policy justifications, *id.* at 710-11; and "purpose" describes the defendant's goal or end result as opposed to the means that are used to try to achieve it. *Id.*

[36] The defendants' training materials and public writings admit their intent to commit predicate acts.

finds no support in the text of RICO or in criminal law,[37] and would hopelessly complicate already complex litigation.[38]

The Seventh Circuit was uncomfortable with taking the text of RICO at face value; no doubt it believed RICO was just too broad. But even if the courts had the power to amend statutes, the judicial legislation that the Seventh Circuit has created raises far more problems than it solves. The Seventh Circuit's shell-game approach to "economic motive" (Is it in the enterprise? Is it in the predicate acts?) harkens to *Sedima*, 473 U.S. at 494, where this Court warned against vague concepts. The Seventh Circuit's non-textual requirement also contravenes this Court's admonition in *H.J.*, 492 U.S. at 241 n.3: "we prefer to confront [statutory construction] problems directly, not 'by introducing a new and perhaps more amorphous concept into the analysis' that has no basis in text or legislative history."

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[37] As Professor LaFave has explained, "motive" is almost always immaterial to the substantive criminal law. *E.g.*, LaFave, W., *Criminal Law*, Vol. 1 at 319 (1986). *See United States v. Pomponio*, 419 U.S. 10 (1976) (approving jury instruction, "good motives alone is never a defense where the act done or committed is a crime").

[38] A "motive" requirement is particularly problematic when applied to defendants that are organizations, rather than individuals. As the Court found in *United States v. Donruss Co.*, 393 U.S. 297, 308 (1969), "[r]arely is there one motive, or even one dominant motive, for corporate decisions." In construing provisions of the tax code in that case, the Court adopted a standard of objective inquiry into the reasonableness of undistributed corporate earnings, rather than scrutiny into "the vagaries of corporate motive." *Id.* at 307.

Unlike the "pattern" requirement addressed in *H.J.*, RICO does not pose any statutory construction problem as far as "economic motive" is concerned. The text of RICO contains no reference to motive, purpose or goal, and the structure and legislative history of the statute are in accord. There is simply no need -- nor principled basis -- to complicate RICO discovery and trials by injecting any of these problematic and elusive elements.

II.
IF AN ADDITIONAL ECONOMIC DIMENSION WERE REQUIRED, IT IS PLED

This case comes to the Court on a motion to dismiss, which takes all well-pled facts and inferences as true. *See, e.g., Hishon v. King & Spalding*, 467 U.S. 69, 73 (1984); *Conley v. Gibson*, 355 U.S. 41, 45-46 (1957). No one has questioned the fact that the pleadings allege the economic *effects* required by the text of RICO; PLAN is engaged in interstate commerce and the defendants' predicate crimes have had a disastrous effect on the plaintiffs' business and property. As shown in Section I above, these are the only requirements that are true to the text and structure of RICO. The non-textual economic "dimension" requirement adopted by the Second Circuit in *Bagaric* is also satisfied here. The Second Amended Complaint and RICO Case Statement contain dozens of references to financial benefits that the defendants reap from their enterprise and predicate acts.

In fact, insofar as the Seventh Circuit's economic "motive" requirement can be understood, the facts pled here -- and facts consistent with the pleadings -- meet even that standard on motion to dismiss. For example, the complaint

alleges that the defendants are generously compensated for their work conducting the enterprise. They receive salaries and other monetary benefits such as consulting fees, expense accounts and company cars -- far more than most of them earned in their previous endeavors. J.A.71 (¶100). Many of the leaders of the enterprise were either unemployed or in low-paying positions before rising through the ranks of the enterprise. To reach PLAN's "inner circle," where they may be paid salaries or consulting fees, the defendants are required to show their loyalty by committing crimes and suffering arrest. J.A. 106. Once a member of the inner circle, they receive financial rewards far beyond what they were capable of earning in the world of legitimate business.

Former used-car salesman and would-be rock singer Randall Terry's 1989 gross income from his anti-abortion activities was over $777,000. J.A.104-105. In 1991, Operation Rescue had as many as fifteen people on its payroll. Some were designated as employees, others as "consultants," and many were paid up to $800 a week out of Operation Rescue's numerous bank accounts.[39] In 1986, defendant Scheidler received some $45,000 for his work, and his wife received salary or consultation fees as well. Scheidler also enjoys a company car and an expense account, allowing him to travel nationwide advocating

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[39] In 1989, to avoid legal responsibilities relating to judgments and fines imposed by courts nationwide, some of the defendants directed followers not to send money to central offices where the government could seize their assets, but to other payees at other addresses. Leadership explained: "we're going underground." J.A. 105-106. Such subterfuge allowed the enterprise to continue its illegal acts -- and its monetary collections -- without interruption. There can be little question that the desire to keep the money they had raised motivated at least this aspect of the enterprise's scheme.

crimes against clinics. J.A.71 (¶100), 102-104. A former bakery employee, Timothy Murphy, was put on the full-time payroll in 1989, when he began his clandestine weekly trips to transport thousands of stolen fetuses from an Illinois pathology laboratory to Scheidler's home and other chosen locations.

Furthermore, the enterprise is not inexpensive to operate, and it does not run in bare-bones fashion. From offices complete with receptionists, secretaries, accountants, and other staff, the defendants make use of sophisticated electronic equipment to plan and carry out their criminal acts. Enterprise members distribute audio-visual training materials that instruct followers in committing clinic violence and evading the law. In addition to the sales of these materials, the defendants send letters nationwide soliciting financial support for the enterprise and its criminal acts. Defendant Project Life operates clinics that compete with class member clinics in addition to carrying out other acts in furtherance of enterprise goals. Without the money raised as a result of its racketeering activities, PLAN could not exist to carry out future criminal deeds, and its leaders would have to seek legitimate work.

Dismissal of the complaint on a Rule 12(b)(6) motion, despite all these well-pled facts, ignores the allegation by NOW and the clinics that the defendants commit their racketeering activities to generate income to keep the enterprise -- and themselves -- solvent: "the more outrageous and highly-publicized the activities are, the more likely the RICO defendants and the enterprises are to receive large donations." J.A.108.[40] The Seventh Circuit

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[40] As one example, during the lengthy siege of an Atlanta clinic in (continued...)

found sales of training materials irrelevant with the mystifying comment that they did not constitute a "clear and present danger." Pet. A-34. The Seventh Circuit missed the point: although the sales of training materials are not a "clear and present danger," they are an integral part of the business of the enterprise and they establish one of its many economic dimensions.

In short, even if it were proper to engraft an "economic motive" requirement onto RICO, the pleadings here satisfy it.

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[40] (...continued)
1988, Jerry Falwell publicly presented a $10,000 check to the organizers as support for their criminal work.

III.
CONCLUSION

The plain language doctrine allows the Court to fulfill its role of interpreting and applying a statute without usurping the legislative function. For all the reasons discussed above, no economic motive requirement should be added to RICO by the courts, and the decision of the Seventh Circuit should be reversed and the case remanded for further proceedings.

Respectfully submitted,

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Dated: August 13, 1993